

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3393

IN THE MATTER OF:

Served August 17, 1989

Application of EUGENE H. GEORGE )  
Trading as SILVER STAR SIGHTSEEING )  
TOURS to Transfer Certificate )  
No. 108 to SAMUEL J. HOWELL )

Case No. AP-89-23

EUGENE H. GEORGE Trading as SILVER )  
STAR SIGHTSEEING TOURS, Suspension )  
and Investigation of Revocation of )  
Certificate No. 108 )

Case No. MP-89-03

By application filed May 1, 1989, in Case No. AP-89-23, Eugene H. George trading as Silver Star Sightseeing Tours (transferor) seeks approval of the Commission to transfer his Certificate of Public Convenience and Necessity No. 108 to Samuel J. Howell (transferee). Transferee trading as Samuel Howell Sightseeing Tours holds WMATC Certificate of Public Convenience and Necessity No. 89. Transferee would operate under the trade name Silver Star Tours.

By Order No. 3325, served May 2, 1989, in Case No. MP-89-03, transferor's Certificate No. 108 was suspended, and transferor was directed to cease operations. An investigation was instituted to determine whether Certificate No. 108 should be revoked for failure to maintain insurance coverage as required by the Compact and Commission regulations. By letter filed May 19, 1989, transferor (respondent in Case No. MP-89-03) requested that these two cases be consolidated for consideration. The letter stated that transferor, having decided to retire and sell his business, decided not to renew his insurance. Further, transferor waived hearing in Case No. MP-89-03.

By Order No. 3365, served June 27, 1989, these cases were consolidated for consideration. Transferor's May 19 letter was considered a timely response to the show-cause directive of Order No. 3325. A public hearing in Case No. AP-89-23 was scheduled for August 23, 1989. Transferor and transferee were jointly directed to publish notice of the transfer application by July 7, 1989, and a protest date of July 21, 1989, was established. Transferor and transferee were assessed hearing expenses. Transferee was granted 180 days temporary approval, pursuant to the Compact, Title II, Article XII, Section 12(d), to conduct operations pursuant to Certificate No. 108 at the rates filed with the Commission by transferor for such service.

By joint motion filed July 25, 1989, the parties asked the Commission to waive the public hearing and the hearing assessment in Case No. AP-89-23. The motion also contains a request that the Commission accept publication of notice out of time on July 18, 1989. By Order No. 3382, served July 28, 1989, the Commission's Executive Director cancelled the August 23 hearing, suspended the hearing assessments, and referred the joint motion to the Commission for disposition.

Publication of notice, directed by July 7, was made on July 18, just three days before protests were due on July 21. We note that as of the date of this order no protests, timely or untimely, have been filed. We believe that any person who saw the notice but was unable to respond by July 21 because of the brevity of time would have protested anyway, noting the shortness of time and asking that the protest be accepted as late filed. Lacking protest, we will accept publication out of time, noting that any person legitimately aggrieved on this point is entitled to raise it on reconsideration. We will also grant the joint motion as to waiver of public hearing and the hearing assessment.

As noted in Order No. 3365, Case No. AP-89-23 falls within the ambit of the Compact, Title II, Article XII, Section 4(h) because it involves the transfer of a certificate, and also Section 12(a) because it involves a carrier that operates in the Metropolitan District acquiring control of a carrier that operates in the Metropolitan District as well as a consolidation or merger of the certificates of the parties. As we also noted, the standard for approval in each cited section is consistency with the public interest.

Before turning to the transfer application, we must dispose of the question of whether Certificate No. 108 should be revoked as a result of the holder's failure to maintain insurance. The record shows that the parties entered into a contract of sale for transferor's business and assets, including Certificate No. 108, on April 15, 1989. Transferor's insurance expired May 1, 1989, and transferor's letter filed May 19, 1989, explained why he had decided not to renew coverage. On June 27, 1989, the Commission expressed its concern that service should be restored during the peak sightseeing season and granted transferee 180 days temporary approval to operate Certificate No. 108. The joint motion filed July 25, 1989, states that transferee, "since issuance of Commission Order No. 3365, has been providing adequate continuous service to the public . . . and is willing and capable of providing competent continuous service in the future." We find that revocation of Certificate No. 108 is not warranted in Case No. MP-89-03, and we further find, as relevant later in this order, that dormancy of Certificate No. 108 is not a factor in Case No. AP-89-23.

We turn now to the merits of the transfer application. Transferee is an experienced sightseeing operator whose Certificate No. 89 was issued in 1983. To his existing special operations

J sightseeing authority transferee seeks to add transferor's Certificate No. 108 special operations sightseeing authority to serve eight Northern Virginia hotels. Certificate Nos. 89 and 108 are both restricted to service in vehicles with a manufacturer's designed seating capacity of 15 persons or less (including the driver). Transferee has on file with the Commission an insurance certificate covering the operation of two vans. Transferee's balance sheet as of December 31, 1988, shows current assets of \$27,600 and fixed assets of \$26,992 after depreciation. Current liabilities are shown as \$8,000 and no long-term liabilities are shown. Proprietor's equity is shown as \$46,592. Transferee's operating statement for the year ended December 31, 1988, shows WMATC operating income of \$29,852 and operating expenses, including depreciation, of \$26,110, resulting in net operating income of \$3,742. We find transferee fit as to finances, operations, and compliance.

In addition to dormancy of the operating rights and fitness of the carrier proposing to acquire them, both discussed above, we must also consider the impact of the proposed transfer on the competitive balance. Transferee's expanded operations would be limited by the terms of Certificate No. 108 to the eight hotels listed therein. Transferee will simply provide this limited service previously provided by transferor. We find that this will not affect, much less upset, the competitive balance in the sightseeing industry in the Metropolitan District. Finally, the purchase price of the business and assets appear to be the result of an arm's length transaction between two competent parties, both experienced in the business and represented by counsel. We find the proposed transfer to be consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That the joint motion to waive public hearing, to waive the hearing assessment, and to accept publication of notice out of time is hereby granted.

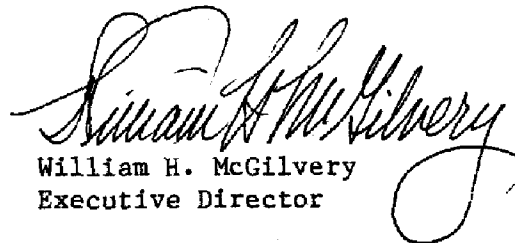
2. That the application of Eugene H. George to transfer Certificate of Public Convenience and Necessity No. 108 to Samuel J. Howell is hereby conditionally granted, contingent upon timely compliance with the terms of this order.

3. That Samuel J. Howell is hereby directed to file with the Commission (a) two copies of a tariff adoption notice and a new tariff in accordance with the Commission Regulation No. 55-06, (b) an affidavit that the contract between transferor and transferee has been consummated, and (c) a certificate of insurance in accordance with Commission Regulation No. 62 naming the insured as Samuel J. Howell trading as Silver Star Tours.

4. That upon compliance with the requirements of the preceding paragraph, and acceptance of the tariff materials by the Commission, Certificates of Public Convenience and Necessity Nos. 89 and 108 will be consolidated and reissued as Certificate of Public Convenience and Necessity No. 89 to Samuel J. Howell trading as Silver Star Tours in the form and as worded in the Appendix to this order, and Case No. MP-89-03 will be discontinued.

5. That unless compliance is so made within 30 days from the date of service of this order, or such additional time as may be authorized by the Commission, the application in Case No. AP-89-23 will stand denied in its entirety, and Certificate of Public Convenience and Necessity No. 108 will stand revoked, effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery  
Executive Director

NO. 89

SAMUEL J. HOWELL  
Trading as SILVER STAR TOURS

By Order Nos. 2447, 2483, and 2504 of the Washington Metropolitan Area Transit Commission issued August 9, October 7, and December 2, 1983; by Order Nos. 2557 and 3054 issued May 22, 1984, and July 2, 1987; and by Order No. 3393 issued August 17, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 2447, 2483, 2504, 2557, 3054, and 3393;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, VA, the Veterans Administration, the Bible Way Church, the Gramercy Inn, and the Normandy Inn, and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to 17th Street, N.W., thence along 17th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th Street, N.W., thence along 9th Street, N.W., to Pennsylvania Avenue, N.W.,

thence along Pennsylvania Avenue, N.W., to  
Constitution Avenue, N.W., thence along Constitution  
Avenue to its junction with 2nd Street, N.E.

SPECIAL OPERATIONS, transporting passengers and their  
baggage in the same vehicles with passengers, in  
round-trip sightseeing service, from a hotel at 3335  
Lee Highway, Arlington, VA; a hotel at 6650 Arlington  
Boulevard, Fairfax County, VA; a hotel at 421 West  
Broad Street, Falls Church, VA; a hotel at 300 West  
Broad Street, Falls Church, VA; a hotel at 6111  
Arlington Boulevard, Fairfax County, VA; a hotel at  
6633 Arlington Boulevard, Fairfax County, VA; a hotel  
at 6800 Lee Highway, Arlington, VA; and a hotel at  
1211 North Glebe Road, Arlington, VA, to points in  
the District of Columbia and Arlington County, VA,  
and return.

RESTRICTED to service in vehicles with a  
manufacturer's designed seating capacity of 15  
passengers or less (including the driver), and  
further restricted against transportation solely  
within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this  
certificate that the holder thereof shall render reasonable,  
continuous, and adequate service to the public in pursuance of the  
authority granted herein, and that failure to do so shall constitute  
sufficient grounds for suspension, change, or revocation of the  
certificate.